

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Greg Davis and Linda Myers,

No. 2:21-cv-0174-KJM-KJN

Plaintiffs,

ORDER

V.

Mercedes-Benz USA, LLC,

Defendant.

In this “lemon law” action, the parties have settled their dispute, and plaintiffs now move for attorneys’ fees and costs. For the reasons below, the court **grants in part** plaintiffs’ motion, approving a modified amount of **\$22,837.5¹**.

I. BACKGROUND

Plaintiffs filed suit against defendant in Sacramento County Superior Court, alleging a violation of the Song-Beverly Consumer Warranty Act, known as the “lemon law,” based on

¹ Defendant requests judicial notice of two court orders. RJN, ECF No. 27. The court grants the request. See *Applied Underwriters, Inc. v. Lara*, 530 F. Supp. 3d 914, 923 (E.D. Cal. 2021) (“Courts routinely take judicial notice of documents on file in federal or state courts . . .”), aff’d on other grounds, 37 F.4th 579 (9th Cir. 2022).

Both parties have filed numerous objections to declarations filed by the opposing party. Objs., ECF Nos. 28, 29, 34. To the extent this court's analysis implicates any declaration to which there was an objection, such objection is overruled.

1 defendant's sale of a defective 2018 Mercedes-Benz E63 AMG for \$158,400.16. Sogoyan Decl.
2 ¶¶ 3, 18, ECF No. 20. Defendant removed, invoking this court's diversity jurisdiction. *Id.* ¶ 19.
3 The parties engaged in written discovery, but did not engage in any depositions or pleading
4 challenges.² *See* Mot. at 5–6, ECF No. 19; Sogoyan Decl. ¶¶ 22–36.

5 The parties settled, and the settlement permits plaintiffs' counsel to recoup "attorneys'
6 fees, costs, and expenses that have been reasonably incurred to date[.]" Gallagher Decl. Ex. B
7 (Settlement Agreement) at 2, ECF No. 26-5. Plaintiffs now seek a total amount of \$72,353.80,
8 which includes \$60,330.5 in attorneys' fees, \$6,000 in additional fees for work related to their
9 motion for attorneys' fees, and \$6,012.85 in litigation costs. Mot. at 3.

10 Because the parties disagree on an amount of reasonable attorneys' fees and costs,
11 plaintiffs filed this motion. *See id.* Defendant opposes. Opp'n, ECF No. 26. Plaintiffs replied.
12 Reply, ECF No. 30. The court submitted the matter without an oral argument. Min. Order, ECF
13 No. 35.

14 II. LEGAL STANDARD

15 The parties do not dispute that plaintiffs' counsel is entitled to recoup reasonable
16 attorneys' fees, costs, and expenses under the settlement. "A prevailing buyer has the burden of
17 showing that the fees incurred were 'allowable,' were 'reasonably necessary to the conduct of the
18 litigation,' and were 'reasonable in amount.'" *Durham v. FCA US LLC*, 2020 WL 243115, at *3
19 (E.D. Cal. Jan. 16, 2020) (citation omitted). If a fee request is opposed, "[g]eneral arguments that
20 fees claimed are excessive, duplicative, or unrelated do not suffice." *Id.* (quoting *Premier Med.
Mgmt. Sys. v. Cal. Ins. Guarantee Assoc.*, 163 Cal. App. 4th at 550, 564 (2008)). "Rather, the
21 opposing party has the burden to demonstrate the hours spent are duplicative or excessive." *Id.*
22 (citation omitted).

24 III. ANALYSIS

25 "The determination of what constitutes a reasonable fee generally begins with the lodestar,
26 i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate."

² Defendant withdrew its motion for judgment on the pleadings before plaintiffs responded to the motion. *See* Not. Withdrawal, ECF No. 13.

1 *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 154 (2006) (internal quotations
2 omitted). After determining the lodestar fee award, the court considers whether to apply an
3 adjustment. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001).

4 Here, plaintiffs seek a total of \$72,353.80 in attorneys' fees and costs. Defendant
5 challenges plaintiffs' proposed (1) hourly rates, (2) hours of work spent, (3) lodestar multiplier,
6 (4) additional fees for work related to this motion; and (5) litigation costs. *See Opp'n*. The court
7 addresses each argument made by defendant below.

8 **A. Hourly Rates**

9 A reasonable hourly rate is "the rate prevailing in the community for similar work." *Arias*
10 *v. Ford Motor Co.*, 2020 WL 1940843, at *3 (C.D. Cal. Jan. 27, 2020). "The relevant community
11 is the community in which the court sits." *Id.* (citation omitted). To determine a reasonable rate,
12 a court may refer to "[a]ffidavits of the plaintiffs' attorney and other attorneys regarding
13 prevailing fees in the community" and rates paid in other cases. *United Steelworkers of Am. v.*
14 *Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). "If an applicant fails to meet its burden,
15 the court may exercise its discretion to determine reasonable hourly rates based on its experience
16 and knowledge of prevailing rates in the community." *Arias*, 2020 WL 1940843, at *3 (citations
17 omitted).

18 Here, plaintiffs' requested rates are unreasonably high. They request the following hourly
19 rates for four attorneys: (1) \$395 to \$500 for Kevin Jacobson who passed the bar in 2018;
20 (2) \$425 to \$450 for Gregory Sogoyan who passed in 2017; (3) \$350 for both Nicolas Yowarski
21 and Jess Fortune who passed in 2021. Mot. at 11; Jacobson Decl. ¶¶ 6–16, ECF No. 21; Jacobson
22 Decl. Reply ¶ 4, ECF No. 33; *see also Jurosky v. BMW of North Am., LLC*, 2020 WL 5033584, at
23 *2 (S.D. Cal. Aug. 25, 2020) (noting Sogoyan admitted to bar in 2017). Although plaintiffs argue
24 their proposed rates are similar to those awarded in other lemon law cases, *see* Mot. at 11–12,
25 none of those rates were awarded in or near the Sacramento courthouse or even within this
26 district. Nor have plaintiffs explained why out-of-district rates are appropriate here. *See id.*

27 Courts in this district have awarded rates between \$175 and \$300 for attorneys with less
28 than ten years' experience. *Greer v. Dick's Sporting Goods, Inc.*, 2020 WL 5535399, at *10

1 (E.D. Cal. Sept. 15, 2020) (citation omitted). Defendant suggests plaintiffs' rates should be
2 between \$200 and \$250. Opp'n at 24. The court finds an hourly rate of **\$250** to be appropriate
3 for plaintiffs' four attorneys.

4 **B. Hours of Work Spent**

5 In determining an appropriate fee award, "the district court should exclude hours that are
6 excessive, redundant, or otherwise unnecessary." *McCown v. City of Fontana*, 565 F.3d 1097,
7 1102 (9th Cir. 2009) (internal quotation marks and citation omitted). As a general rule, however,
8 "the court should defer to the winning lawyer's professional judgment as to how much time he
9 was required to spend on the case." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir.
10 2008).

11 The billing records submitted by plaintiffs indicate their counsel spent a total of 106.55
12 hours on this matter, including 19.2 hours spent preparing their motion. Mot. at 12. Defendant
13 challenges opposing counsel's billing practices for (1) including entries the defense deems
14 excessive or duplicative, and (2) including hours accrued after settlement. Opp'n at 14–21.

15 **1. Excessive or Duplicative Billing**

16 Defendant argues certain billing entries reveal an excessive amount of time spent on a
17 task. *Id.* at 14–16. For example, defendant points to Mr. Sogoyan's recording .8 hours (48
18 minutes) to "send an email regarding outstanding discovery and requesting the parties stipulate to
19 amend the scheduling order" (entry dated November 11, 2021) and .6 hours (36 minutes) to "draft
20 a joint status report regarding the status of mediation." *Id.* at 15. The court does not find the
21 examples provided by defendant to be particularly excessive, particularly considering the
22 deference accorded a lawyer's professional judgment as to how much time he was required to
23 spend on a matter. *Moreno*, 534 F.3d at 1112.

24 Similarly, defendant argues several entries are "duplicative" and provides several
25 examples. *See* Opp'n at 16–17. Plaintiffs, however, explain those entries were made separately
26 to avoid block-billing, *see* Reply at 9–10, and the court again finds the entries not unreasonable
27 and defers to the attorneys' professional judgment. The court will not reduce the lodestar on this
28 basis.

1 **2. Hours Incurred After Settlement**

2 In contrast to the time reviewed above, the settlement agreement's "to date" language
 3 forecloses plaintiffs' recovery of any fees incurred after the parties' settlement. *See* Settlement
 4 Agreement at 2 (stating plaintiffs' counsel is entitled to "attorneys' fees, costs, and expenses that
 5 have been reasonably incurred *to date*") (emphasis added). In other lemon law cases, courts did
 6 not award post-settlement fees when the parties agreed to similar "to date" language. *See, e.g.*,
 7 *Hanai v. Mercedes-Benz USA, LLC*, 2022 WL 718037, at *3 (N.D. Cal. March 10, 2022).
 8 Plaintiffs do not address the settlement's "to date" language, and instead cite unrelated cases
 9 where such language was absent. *See* Reply at 6. Some of the cases plaintiffs cite even conclude
 10 a court should reject awarding any post-settlement fees. *See, e.g.*, *Speiker v. FCA US, LLC*, 2021
 11 WL 4353273, at *5 (C.D. Cal. June 4, 2021) (rejecting request for post-settlement fees). "If a
 12 plaintiff desires fees on fees in the event a fee application to the district court is required, the
 13 plaintiff should ensure that the settlement terms do not foreclose the availability of such fees."
 14 *Lilly v. City of New York*, 934 F.3d 222, 237–38 (2d Cir. 2019).

15 Accordingly, the court excludes 19.2 hours plaintiffs billed for work performed after the
 16 settlement date of January 28, 2022. This leaves **87.35 hours**; with the hourly rate of \$250,
 17 plaintiffs' total lodestar amount is **\$21,837.5**.

18 **C. Lodestar Multiplier**

19 Once a court determines the lodestar, "it may be adjusted by the court based on factors
 20 including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill
 21 displayed in presenting them, (3) the extent to which the nature of the litigation precluded other
 22 employment by the attorneys, [and] (4) the contingent nature of the fee award." *Ketchum*, 24 Cal.
 23 4th at 1132.

24 No multiplier is warranted here. Plaintiffs do not argue the issues litigated were novel or
 25 complex. *See* Mot. 14–16. No special skill was required; the parties only engaged in written
 26 discovery, and did not take any depositions or file pleading challenges. *See id.* at 5–6. Moreover,
 27 "a contingent fee agreement only favors an upward departure when there is an 'uncertainty of
 28 prevailing on the merits and of establishing eligibility for the award.'" *Arias*, 2020 WL 1940843,

1 at *5 (quoting *Robertson v. Fleetwood Travel Trailers of Cal. Inc.*, 144 Cal. App. 4th 785, 819
2 (2006)). Given that plaintiffs' counsel regularly undertakes this type of work, counsel did not
3 face such uncertainty that a multiplier is warranted. *See id.* (finding same). Accordingly, the
4 lodestar amount remains at \$21,837.5.

5 **D. \$6,000 Additional Fees for the Motion for Attorneys' Fees**

6 As noted above, the parties' settlement prohibits plaintiffs from recovering any post-
7 settlement fees. *See Settlement Agreement* at 2 (stating plaintiffs' counsel is entitled to
8 "attorneys' fees, costs, and expenses that have been reasonably incurred *to date*") (emphasis
9 added). Thus, the court denies plaintiffs' request for \$6,000 additional fees for work related to
10 their motion.

11 **E. Litigation Costs**

12 Plaintiffs also request a total of \$6,012.85 in litigation costs, which include \$5,012.85 for
13 "[c]osts and expenses paid to Plaintiffs' retained expert, Darrell Blasjo[,] in connection with this
14 case" and \$1,000 for "[f]iling, and administrative costs and expenses" Jacobson Decl. Ex. 6 at 6,
15 22, ECF No. 21-6.

16 As a threshold matter, plaintiffs are not entitled to the expert fees. Although plaintiffs rely
17 on state law authorities, in this diversity case the court must apply federal law to determine
18 whether plaintiffs may recover expert fees as costs. *See Aceves v. Allstate Ins. Co.*, 68 F.3d 1160,
19 1167–68 (9th Cir. 1995) (citing *Hanna v. Plumer*, 380 U.S. 460, 463 (1965); finding district court
20 erred in applying California law because "reimbursement of expert witness fees is an issue of trial
21 procedure" and in diversity action, "federal law controls the procedure by which the district court
22 oversaw the litigation"). Under the applicable federal law, plaintiffs are entitled to compensation
23 only for "court appointed experts." *See* 28 U.S.C. § 1920; *Seebach v. BMW of North Am., LLC*,
24 2021 WL 516712, at *1 (E.D. Cal. Feb. 11, 2021). Because plaintiffs' expert witness was not
25 appointed by the court, plaintiffs may not recover the expert fees.

26 Thus, the court denies plaintiffs' request for \$5,012.85 in expert fees. The court grants
27 plaintiffs' unopposed request for \$1,000 in filing and administrative costs. *See generally* Opp'n;
28 *see also* 28 U.S.C. § 1920 (allowing litigants to recover filing and administrative costs).

1 **IV. CONCLUSION**

2 For the foregoing reasons, plaintiffs' motion for fees is **granted** in the modified amount of
3 **\$22,837.5**, which includes \$21,837.5 in attorneys' fees and \$1,000 in costs.

4 This order resolves ECF No. 19.

5 IT IS SO ORDERED.

6 DATED: October 27, 2022.



CHIEF UNITED STATES DISTRICT JUDGE